

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF ILLINOIS

3
4 ERIC WILL, et al.,)

5 Plaintiffs,)

6 vs.) No. 06-698-WDS

7 GENERAL DYNAMICS CORPORATION,)

8 Defendant.)

9
10 The videotaped deposition of HENRY C.

11 EICKELBERG, called for examination, taken pursuant

12 to the Federal Rules of Civil Procedure of the

13 United States District Courts pertaining to the

14 taking of depositions, taken before NANCY A.

15 GUIDOLIN, CSR No. 84-2531, a Notary Public within

16 and for the County of DuPage, State of Illinois,

17 and a Certified Shorthand Reporter of said state,

18 at Suite 3930, 55 East Monroe Street, Chicago,

19 Illinois, on the 13th day of March, A.D. 2007, at

20 10:26 a.m.

21

22

23

24



1 in Chicago in their -- I was a partner in their
2 ERISA practice.

3 Q. How long were you with Jenner & Block?

4 A. I worked for Jenner & Block from
5 December of '94 until January of 1997, and then I
6 started my position at General Dynamics, and we
7 moved out from the Chicago area to Washington,
8 D.C. in the summer of '97. So my kids finished
9 school, and then we moved to the Washington area.

10 Q. Are you in Washington, D.C. now? Is
11 that where you live?

12 A. Well, we live in Virginia, Northern
13 Virginia.

14 Q. But your office is in Washington, D.C.?

15 A. It's Falls Church. It's a suburb of --
16 it would be like in St. Louis like Clayton or
17 something like that. It's a suburb of D.C.

18 Q. Yeah. I worked in D.C. for three
19 years.

20 A. Yeah. It's a pretty area.

21 Q. Yeah. It's nice.

22 What -- okay. Let's -- at General
23 Dynamics what was your position when you started
24 in 1997?

1 A. My official salary -- or -- my official
2 salary, we will get to that.

3 My official title was Staff Vice
4 President Benefit Programs.

5 Q. Okay.

6 A. And now it's Staff Vice President Human
7 Capital Processes, which really reflects the fact
8 that my areas of responsibility include more than
9 just the benefit functions; payroll and
10 occupational health and safety, and things of that
11 nature.

12 Q. When did the title change?

13 A. I would say -- I don't know the exact
14 time frame, but I would say probably 2002 or 3.
15 I would have to look. I don't remember, but it
16 has been a couple of years.

17 Q. Okay. Did the responsibilities change
18 or --

19 A. Increase, yeah. It was an increase. I
20 still oversee the benefit functions. In addition
21 to that I am responsible for payroll and OSHA. We
22 have a travel reimbursement section that I am
23 responsible for. So if you travel on business
24 travel and you have an expense report, I run

1 those -- I oversee a service center that processes
2 that.

3 Q. Okay. Make sure nobody gets movies or
4 anything.

5 A. Exactly. We check those very
6 carefully.

7 Q. Who -- so right now you're in the
8 benefits area of your position, the employee
9 benefits?

10 A. Correct.

11 Q. What does that include?

12 A. It includes both the design and the
13 delivery of employee benefits, and that is
14 primarily ERISA type of plans, and I draw that as
15 a distinction from like vacation and so forth,
16 which from a layman's point of view people would
17 say that's a benefit, but that's a local --
18 essentially a local payroll practice.

19 Q. Okay. And so in ERISA does that
20 include health insurance?

21 A. Yes. It include health insurance,
22 life insurance, the retirement plans, both the
23 pension, because we have a traditional defined
24 benefit plan as well as 401(k) Plans.

1 the amount of contributions that they have -- I
2 mean, matching contributions that they have
3 received and the funds that they selected?

4 A. That would be some -- that's right.

5 That would be some of the differences that would --

6 Q. Potentially if there are any loans,
7 those would be reflected?

8 A. Correct. Right.

9 Q. But other than that, this is the basic
10 form?

11 A. That is the basic form.

12 Q. Can you tell me -- you have looked
13 through that. Can you tell me how much in the
14 first portion of 2006 did Eric Will pay in fees and
15 expenses on his account?

16 A. You invited me at the beginning of the
17 deposition to ask you to clarify your question. I
18 am not sure what you mean by "fees and expenses."

19 Q. Both the hourly and salaried SSIP pass
20 on the expenses of the plan to the participants,
21 correct?

22 A. I would not agree with that.

23 Q. How is that not correct?

24 A. In running -- maybe I can take a second

1 and describe how this works. ERISA at its base is
2 founded on trust law, and trust law in the sense
3 that Congress directed that employers are allowed
4 to get a deduction for contributions that they
5 contribute to a trust on behalf of beneficiaries.

6 None of the funds that are contributed
7 to the trust are the direct property of the
8 participants themselves. If it was the direct
9 property of the participants themselves, then there
10 wouldn't be a tax deduction for the -- there would
11 not be the avoidance of income taxes which is
12 critical to the participant, and that includes both
13 the after tax contributions and pre-tax
14 contributions.

15 So in layman's terms people would look
16 at the account as their own money, but what it
17 really is, and it needs to be this way for tax
18 reasons and for legal reasons, they have a
19 beneficial interest which is expressed by virtue of
20 these account statements. The owner of all of the
21 assets is Northern Trust. It's not General
22 Dynamics and it's not the participants.

23 The participants are trust beneficiaries
24 of the single corpus that's owned by Northern

1 Trust. By virtue of the Plan's design,
2 participants are given a range of investments that
3 they can ask be allocated -- that their beneficial
4 interest be allocated to, but all of the expenses -
5 and there are expenses for both the investment and
6 the administration of the plan - all of those
7 expenses are paid at the trust level by the
8 trustee.

9 The net resulting income is then
10 allocated to the beneficial -- to each beneficiary
11 in proportion to their interest. So there is no --
12 there is no situation -- the plan is not set up to
13 run where you have a separate segmented group of
14 assets for each individual participant.

15 Each participant has an
16 indistinguishable interest in a whole, and the plan
17 trustee, Northern Trust, pays all of the expenses,
18 and then the net income is essentially allocated
19 through an accounting function on paper, and it's
20 called an account statement, to make it easier to
21 communicate for the participants.

22 We don't call them beneficiaries,
23 because it would take us a long time to get
24 employees to understand what that nuance means, but

1 it's critical because all of the record keeping
2 that we do is essentially around dividing up their
3 beneficial interest in an activity that is taking
4 place one level above them.

5 So you mentioned fees. Under the law we
6 are allowed to charge participants fees, but those
7 fees are activity related fees that we would
8 disclose in our SPE.

9 For example, we talked about plan loans.
10 If Mr. Will had a plan loan and we decided to
11 charge a \$50 fee to get that plan loan, it would
12 show up on his account statement, because that's
13 not a plan level cost. That's a participant level
14 fee.

15 We could charge him for carrying a plan
16 loan, a couple of dollars a month for carrying a
17 plan loan. I notice that Mr. Will is married. If
18 he filed -- unfortunately if he got in unfortunate
19 circumstances of getting divorced, we could charge
20 a reasonable fee to his account directly for the
21 purposes of processing the QDRO.

22 So implicit in your statement is that
23 Mr. Will has a separate segment of assets that we
24 can go over and look at, and, in fact, what he has

1 is a beneficial interest in a trust which is owned
2 by Northern Trust and held for the exclusive
3 benefit of Mr. Will and approximately, you know, 80
4 plus thousand other employees.

5 Q. Okay. And I understand all of that, and
6 so let's ask it another way. What portion of
7 Mr. Will's beneficial interest was paid for
8 administrative expenses in the plan?

9 A. As I mentioned before, we allocate to
10 Mr. Will's account, which is indicated very clearly
11 by the change in the net asset value, the price per
12 unit changes based on the net income after plan
13 level costs. The plan level costs are paid for
14 by -- paid for by the trust.

15 Q. What -- where are you looking at?

16 A. By the trustee. On Page 3 there is a
17 price "net asset value per unit."

18 Q. Okay.

19 A. The net asset value per unit is
20 determined in our plan on a daily basis. What we
21 do is we get the income from the fund -- particular
22 fund. In this case, you know, Mr. Will has chosen
23 to invest in a number of our different funds, which
24 is fine, and then we subtract off the plan level

1 costs and then allocate to Mr. Will his share, if
2 you will, of -- to show him how much his beneficial
3 interest is in the whole.

4 Q. How much --

5 A. He doesn't have a specific balance. He
6 has a number of units times a net asset value. The
7 number of units increases when he makes
8 contributions. It decreases when he makes
9 withdrawals, and the value of his account goes up
10 and down by the net income which is the income
11 minus the plan level costs, and the two are
12 multiplied together to show Mr. Will what his
13 dollar denominated, if you will, beneficial
14 interest is in the trust.

15 Q. What were the plan level costs that
16 Mr. Will paid in or were allocated against him to
17 arrive at this net asset value?

18 A. Well, the plan level costs were paid for
19 by the plan.

20 Q. Well, can you tell me what they were?

21 A. You'd have to -- I would have to refer
22 to the 11(k) to see what they were.

23 Q. Can you tell me once you have
24 referred -- from the 11(k) could you tell me how

1 much was allocated to Mr. Will?

2 A. Well, again, that I understand -- your
3 question presupposes that Mr. Will has a separate
4 segment of assets. He has an indivisible interest
5 in the trust itself.

6 Q. Okay.

7 A. He has a beneficial interest which is
8 indistinguishable -- I can't go to an account at
9 Northern Trust to see the dollars for Mr. Will.
10 Mr. Will has an interest in the total amount.

11 Q. Can you tell me what the actual expenses
12 incurred with respect to Mr. Will's individual
13 account is or are? The actual expenses incurred
14 with respect to Mr. Will's individual account, can
15 you tell me what those are from this statement?

16 A. What kind of expenses are you talking
17 about?

18 Q. The actual expenses incurred with
19 respect to Mr. Will's individual account.

20 MR. MARTIN: Object to the form of the
21 question. If you can answer the question, that's
22 fine, but if you can't, that fine, too.

23 BY MR. CONLISK:

24 Q. Sorry.

1 A. Sorry.

2 Q. The question was: Can you tell me what
3 the actual expenses incurred with respect to
4 Mr. Will's individual account were for the period
5 reported in this statement?

6 MR. MARTIN: I object to the form of the
7 question and the use of the word "actual expenses,"
8 because Mr. Eickelberg asked you to define actual
9 expenses.

10 BY MR. CONLISK:

11 Q. Can you tell me the administrative
12 expenses that were incurred with respect to
13 Mr. Will's individual account from this statement?

14 A. The plan pays the administrative
15 expenses and allocates the income to Mr. Will. I
16 mean, I don't know how else that I can say it.

17 Q. Well, I guess --

18 A. I mean, if there were plan level fees or
19 if there were participant level fees that Mr. Will
20 paid, we would have put them in the SPD and put
21 them on his account. The cost of running the plan
22 is borne by the Northern Trust on behalf of the --
23 as the trustee. The net income is then allocated
24 to the individual participants on a record keeping

1 account, which is what this is.

2 Q. Okay. I understand that, and I am not
3 trying to be argumentative.

4 A. I understand.

5 Q. And so -- I mean, if the answer is that
6 you can't tell me from this statement what the
7 actual expenses incurred with respect to Mr. Will's
8 individual account is, you can -- your answer can
9 be that.

10 A. But I understand --

11 MR. MARTIN: I object to the form of the
12 question, because it's argumentative.

13 BY MR. CONLISK:

14 Q. Okay. I am, by the way, reading from
15 the ERISA regulations as to what they are supposed
16 to be.

17 MR. MARTIN: It doesn't matter what you are
18 reading from. The question is argumentative.

19 BY MR. CONLISK:

20 Q. Okay. So, first of all, let's break
21 this down some. The expenses are paid by the
22 trust, correct?

23 MR. MARTIN: Object to the form of the
24 question.

1 BY MR. CONLISK:

2 Q. The administrative expenses of the plan
3 are paid by the trust, correct?

4 A. Are paid by the trustee.

5 Q. By the trustee. And the trustee makes
6 that payment from funds that are in the trust,
7 correct?

8 A. From the corpus, that's correct.

9 Q. And does General Dynamics contribute
10 money to the trust for the purpose of covering
11 those expenses?

12 A. Yes. We put in matching contributions
13 which go to offset the cost of the plan and
14 allocate it, because there are forfeitures.

15 So yes.

16 Q. So --

17 A. Yeah. We do contribute to --

18 Q. Other than matching contributions does
19 General Dynamics pay the particular expenses, the
20 administrative expenses of the plan?

21 A. Some of the administrative expenses we
22 do and some of them we charge -- are charged to the
23 plan and paid for by the Northern Trust.

24 Q. Which administrative expenses does

1 General Dynamics pay?

2 A. There would be some communications and
3 design costs that we would believe would not be an
4 appropriate -- would be in legal parlance settlor
5 expenses, and we would not charge those to the
6 participants.

7 Q. And we can agree -- I mean, you are an
8 ERISA practitioner of markedly more experience than
9 me, we can agree that the reason that you don't
10 charge settlor expenses to the trust is because the
11 law precludes you from doing so, correct?

12 A. That's correct.

13 Q. And so I am not asking about settlor
14 expenses. I am asking about administrative
15 expenses. Does General Dynamics pay the
16 administrative expenses of the trust?

17 MR. MARTIN: Object to the form of the
18 question. I think it's -- that question has been
19 asked and answered.

20 MR. CONLISK: He can answer it.

21 BY THE WITNESS:

22 A. Can you ask it again?

23 BY MR. CONLISK:

24 Q. Does General Dynamics pay the

1 administrative expenses of the trust?

2 MR. MARTIN: Same objection.

3 BY MR. CONLISK:

4 Q. You can answer. He is objecting for the
5 record.

6 A. We pay -- there are -- there are
7 arguably some administrative expenses that we do
8 pay, and we do charge the trust for others, but we
9 don't charge individual participants, because the
10 net income is allocated to the individual
11 participants.

12 Your question presupposes that we have a
13 responsibility to segment the assets inside of the
14 trust for each particular person. That's not how
15 an ERISA plan works.

16 Q. Okay. And I am asking -- and my
17 question is this: Is there any way for Mr. Will to
18 know from looking at this statement what amount of
19 administrative expenses that he incurred in
20 connection with his account for this period?

21 MR. MARTIN: Object to the form of the
22 question. It's been asked and answered, but you
23 can answer it again.

24 BY THE WITNESS:

1 A. The plan pays all of the administrative
2 expenses, the trustee pays all of the
3 administrative costs of running the corpus,
4 including the production of the account statements
5 that are -- represent the beneficial interest of
6 each participant. Mr. Will did not -- we don't
7 charge participant level fees for activities, and
8 so there won't be any participant level fees on any
9 of the account statements, but the costs of running
10 the program are paid for at the trust level, and
11 the net income is then allocated to each
12 participant through this net asset value on -- it's
13 on his account statement.

14 BY MR. CONLISK:

15 Q. The net asset value on his account
16 statement is determined by adding his contributions
17 and the company's matching contributions. That's
18 one element of it, correct?

19 A. No. Huh-uh. No. That would change the
20 units. So basically --

21 MR. MARTIN: You should wait for a question.

22 BY MR. CONLISK:

23 Q. So basically what?

24 A. The unit --